

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE:**

**RICHARD M. OSBORNE**

**DEBTOR**

**CASE NO. 17-17361**

**CHAPTER 11**

**JUDGE ARTHUR HARRIS**

**DIANE OSBORNE'S MOTION FOR A MODIFICATION OF THE AGREED ORDER  
FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11  
U.S.C. § 507(A)(1) [DOCKET 375]**

Diane Osborne ("Movant"), by and through her undersigned attorneys, hereby moves this Court (the "Motion") for the modification to the agreed entry of an order [DOCKET #375] allowing and directing payment pursuant to 11 U.S.C. § 507(A)(1) to Movant of an administrative expense claim in the amount of \$130,000 for post-petition domestic support payments ordered by the Court of Common Pleas Cuyahoga County.

The Court Order entered on January 31, 2019 provided that:

**THE COURT FINDS:**

1. Ms. Osborne is the Debtors former wife, and the Debtor acknowledges that he owes the Ms. Osborne \$10,000 per month for a domestic support obligation pursuant to a property settlement and divorce decree. As of January 2019 Ms. Osborne is owed \$130,000 for unpaid post-petition them mystic support obligations (the "Domestic Support Obligation").
2. Ms. Osborne made five loans between 2009 and 2015 to the Debtor and the current outstanding balance on these loans is \$1,269,628.20 ("Loans").
3. Ms. Osborne filed her Motion for Relief to foreclose on a Mortgage Deed in favor of Osair Inc. dated October 14, 2002 ("Osair Mortgage") made to secure a loan in the original principal amount of \$3,245,327.12 and assigned to Ms. Osborne to secure repayment of the Loans up to the total amount of \$1.1 million ("Assignment Cap"). The balance of the Osair Mortgage was then payable to Osair. Ms. Osborne seeks to pursue foreclosure against certain properties which are listed in the caption of her Motion for Relief. (The listed properties are hereinafter referred to as the "PA Compound").

In addition to the PA Compound Ms. Osborne's loans are secured by other property not part of this bankruptcy estate ("Other Collateral").

**THE COURT ORDERS:**

A. The Motions are granted subject to the following conditions.

B. Ms. Osborne is hereby granted relief from the automatic stay in 11 USC §362 in order to pursue a foreclosure against the PA Compound. The relief from the automatic stay just granted herein is delayed for a period of 90 days to permit the Debtor to sell the PA Compound. If the Debtor obtains an offer he wishes to bring before the Court to sell the PA Compound within such 90 day period, he shall notify counsel for Ms. Osborne within such 90 day period. If such notice is timely given then the relief from the automatic stay granted herein is further delayed pending the ruling of this Court on any motion to sell the PA Compound filed by the Debtor.

C. The Debtor agrees to cause Osair to execute a modification of the mortgage assignment to Ms. Osborne to increase the Assignment Cap from \$1.1 million to \$1.1 million plus the unpaid Domestic Support Obligation arising after the filing of this bankruptcy case, less any payment received by Ms. Osborne from the Other Collateral.

Movant has done further research on the value of the PA Compound and has determined that it is unlikely that there will be sufficient proceeds to secure payments of the Assignment Cap plus the unpaid Domestic Support Obligations. The Debtor has sufficient funds in his DIP accounts to satisfy the unpaid support obligations and has indicated his willingness to distribute the funds to Movant in order to bring his Domestic Support Obligations up to date.

WHEREFORE, for the reasons stated herein, Movant respectfully requests that the Court enter an order, modifying the Order entered January 31, 2019 and allowing the Debtor to pay Movant's allowed administrative expense claim for Domestic Support Obligations immediately; and for such other and further relief as the Court may deem just and proper.

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## CERTIFICATE OF SERVICE

A true and correct copy of the foregoing *Diane Osborne's Motion for a Modification of the Agreed Order for Allowance of Administrative Expense Claim Pursuant to 11 U.S.C. § 507(A)(1) [Docket 375]* was served this 28<sup>th</sup> day of February 2019, to:

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